

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9695 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

GHANSHYAM SHANTILAL PANCHAL

Versus

CADILA LABOURATORIES

Appearance:

1. Special Civil Application No. 9695 of 1994
MR SAURABH MEHTA for MR YN OZA for Petitioner No. 1
Mr. K.B.Nayak for M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/10/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Saurabh Mehta for the
petitioner and Mr. K.B.Nayak for M/S TRIVEDI & GUPTA for

Respondent No. 1. By way of this petition, the petitioner has challenged the award made by the labour court, Ahmedabad in Reference (LCA) No. 85 of 1991 dated 31st March, 1994 wherein the labour court has rejected the said reference. This petition was admitted by issuing rule returnable on 26.9.1994, by order dated 17.8.94.

During the course of hearing, learned advocate Mr. Saurabh Mehta for the petitioner has submitted that the labour court has committed gross error in coming to the conclusion that the provisions of section 25-F of the Industrial Disputes Act, 1947 are not applicable to the facts of the present case. He has submitted that it was not in dispute that the workman remained in continuous service of one year and has completed 240 days service continuously and, therefore, in view of section 2(oo), it amounts to retrenchment and at the time of termination, the respondent has not complied with section 25-F of the Industrial Disputes Act. He has submitted that all these aspects were not properly considered by the labour court and, therefore, the labour court has committed error in rejecting the reference. He has further submitted that on each day, the petitioner was required to work over time and when the petitioner raised for demand for payment of Over Time Allowance, his services were terminated by the respondent and this aspect has also not been considered by the labour court while examining the merits of the matter and, therefore, the award made by the labour court is required to be quashed and set aside.

On the other hand, learned advocate Mr. Nayak for M/s. Trivedi & Gupta for the respondent has, while supporting the award made by the labour court, submitted that the petitioner was appointed by the respondent as a Trainee for a period of 12 months and after completion of that 12 months' period, his service has automatically come to an end and, therefore, it is not amounting to retrenchment and, therefore, section 25-F is not applicable and that has been rightly appreciated by the labour court while examining the merits of the matter. He has further submitted that the labour court has rightly appreciated the evidence on record and has rightly rejected the reference. According to him, the labour court has not committed any error in rejecting the reference and, therefore, no interference is necessary in exercise of the powers under Article 226 and/or 227 of the Constitution of India.

I have considered the submissions made by the learned advocates for the parties. I have also perused

the award made by the labour court.

The petitioner raised industrial dispute against the termination which was ultimately referred for adjudication and was numbered as reference no. 85 of 1991. Before the labour court, statement of claim was filed by the petitioner workman vide Exh.5 wherein he has made mention of the fact that he was appointed as a trainee photographer for a period of one year from 14.8.1988 to 14.8.1989 but before terminating his services, he has not been given any notice or notice pay in lieu thereof nor any retrenchment compensation has been paid to the workman under section 25-F of the Act; no departmental inquiry was initiated and, therefore, termination order is bad. Written statement to the statement of claim was filed by the respondent before the labour court at Exh. 19 contending inter alia that it was an appointment for a specified period of 12 months as a trainee photographer and after completion of the period specified in the order, services of the petitioner were legally terminated being an appointment for a specified period and by a flux of time, service of the petitioner was terminated and, therefore, in view of the provisions of section 2(oo)(bb) of the Act, it does not amount to retrenchment and, therefore, sec. 25F is not applicable to the facts of the case and, therefore, reference is required to be rejected. Before the labour court, the petitioner produced certain documents vide Exh. 8 and the petitioner was examined at Exh. 11 and, thereafter, vide Exh. 28 and 30, two witnesses were examined by the respondent before the labour court. The petitioner examined one witness at Exh. 26 and, thereafter, the issues were framed by the labour court.

The labour court after considering the oral and documentary evidence on record, has come to the conclusion that the petitioner was appointed as trainee photographer for a specified period of 12 months and after completion of 12 months' period, his services were legally terminated and, therefore, section 25-F is not applicable and is not violated by the respondent. The labour court has also noted one important aspect that after termination of the services of the petitioner, the petitioner has raised dispute after about one year and, therefore, considering all these aspects, the labour court has rejected the said reference.

Learned advocate Mr. Saurabh Mehta for the petitioner has shown order of appointment dated 2nd August, 1988. Bare perusal of the said order of appointment, it appears that in response to an

application dated 15th April, 1988 made by the petitioner and in view of the selection of the petitioner made on 26th May, 1988, the petitioner was appointed as a Trainee Photographer in the respondent subject to the terms and conditions incorporated in the said order of appointment. According to the appointment order, training period will be for one year from the date of joining. According to the terms and conditions incorporated in the said order of appointment, it has been specified that the services of the petitioner were liable to be terminated without any notice or notice pay in lieu thereof during the period of training without assigning any reasons. On the basis of the said condition incorporated in the order of appointment, on 2.8.1998, respondent no.3 informed the petitioner that on completion of the one year of training, his service has been terminated with effect from 14.8.1989 after working hours. Thus, in view of the appointment order and the terms and conditions incorporated therein, services of the petitioner were terminated by the employer after completion of the training period of one year without offering any explanation. Looking to section 2(oo)(bb) of the Industrial Disputes Act, it is a case of appointment for specified period and on completion of such period, services would come to an end automatically and this aspect has been considered by the labour court. The labour court has considered the oral and documentary evidence produced by the parties before it. The labour court has not believed the say of the petitioner that he was doing the over time work on each day. The witness Jani has deposed at Exh. 30 that the petitioner has never worked over time and witness Rajubhai Madhusudan examined at Exh. 23 by the respondent has also deposed that the pay slip was being issued to the permanent employee and not to the trainee employee and the working hours in the studio were from 8.00 a.m. to 4.00 p.m. It has also been observed by the labour court that at the time of accepting the employment as a trainee, no objection has been raised by the workman against such terms and conditions incorporated in the order of appointment. In view of such observations made by the labour court and also in view of such conclusion that it was an appointment for a specified period and the service has automatically come to an end by a flux of time and no stigma or allegation has been made by the respondent against the petitioner, the labour court has rejected the reference of the second party workman. Therefore, according to my opinion, the labour court was right in appreciating the oral and documentary evidence before it as well as the order of appointment and termination. I am also of the view that in view of the facts of the

present case and also in view of the provisions under section 2(oo) (bb) of the I.D. Act, the labour court was right in holding that the provisions of section 25-F would not apply to the present case. This aspect has been rightly appreciated by the labour court. According to my opinion, the labour court has not committed any error while rejecting the reference.

Learned advocate Mr. Mehta for the petitioner has not been able to point out any infirmity or jurisdictional error committed by the labour court while rejecting the reference. This Court is having very limited jurisdiction under Article 226 and/or 227 of the Constitution of India. It is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. Therefore, there is no substance in the present petition and the same is required to be dismissed.

For the reasons recorded hereinabove, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

Learned advocate Mr. Saurabh Mehta for the petitioner workman has submitted that while rejecting the reference, the labour court has directed the first party to pay Rs.1000.00 to the petitioner workman within one month from the date of publication of the award but that amount has not been paid so far. In response to this submission, learned advocate Mr. Nayak appearing for M/s. Trivedi & Gupta for the respondent has submitted that if such amount has not been paid so far, same will be paid in accordance with the directions issued by the labour court in the impugned award, within one month from the date of receipt of copy of this order.

Dt. 16.10.2002. (H.K. Rathod, J.)

Vyas